

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket No. 14214US02)

In the Application of:

Martin Lund

Serial No.: 10/665,648

Filed: September 19, 2003

**For: METHOD AND SYSTEM TO
PROVIDE BLADE SERVER LOAD
BALANCING USING SPARE LINK
BANDWIDTH**

Examiner: Man U. Phan

Group Art Unit: 2475

Confirmation No.: 6075

**Transmitted via the Office electronic
filing system July 16, 2010.**

**APPLICATION FOR RECONSIDERATION OF THE
DETERMINATION OF PATENT TERM ADJUSTMENT
UNDER 35 U.S.C. 154(b)
ACCOMPANYING THE NOTICE OF ALLOWANCE
(37 CFR § 1.705)**

Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

Sir:

The applicant respectfully requests reconsideration of the Determination of Patent Term Adjustment Under 35 U.S.C. 154(b) (PTOL-85) accompanying the Notice of Allowance mailed June 24, 2010, ("the Decision") to the extent indicated in the following discussion and the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR. This application for reconsideration of the Decision is being filed after the date of mailing of the Notice of Allowance and no later than the payment of the issue fee.

This application for reconsideration of the Decision is accompanied by the fee set forth in § 1.18(e) (\$200).

This application for reconsideration of the Decision includes below a statement of the facts involved in sufficient detail to allow the United States

Patent and Trademark Office (USPTO) to reach the correct patent term adjustment respecting the disputed items.

The Applicant's calculation shows that the correct patent term adjustment should be 1895 days.

The bases under § 1.702 for the adjustment are as follows.

Positive Patent Term Adjustment

Three Year Guarantee

(35 USC § 154(b)(1)(B))

The USPTO calculation of the patent term adjustment under the three-year deadline for issuing a patent after its filing date was 0 days. The Applicant disagrees with this determination because the patent term adjustment on this ground should instead be 1568 days, minus 334 days consumed by appeals, for a net adjustment of 1234 days.

Specifically, the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR shows that:

- the actual filing date of the application was September 19, 2003,
- the third anniversary of the actual filing date was September 19, 2006,
- the USPTO projected in the DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 USC 154(b) that the patent will issue on the first Tuesday preceding the 28th week after June 24, 2010 (the mailing date of the Determination of Patent Term Adjustment under 35 USC 154(b)), which results in a predicted patent issue date of January 4, 2011,
- the predicted patent issue date stated in the last point will be 1568 days after the third anniversary of the actual filing date, which is the appropriate patent term adjustment.

The patent term adjustment under the three-year rule was reduced by two appeals.

- review by the Board or a Federal court began on the date the first Notice of Appeal was filed, i.e. March 24, 2008,
- the time consumed by review by the Board or a Federal court ended on the date of (1) a Board of Patent Appeals and Interferences decision, a Federal court decision, or a Board remand, or (2) the date prosecution was reopened, i.e. October 24, 2008;
- the time consumed by the first appeal thus ended on October 24, 2008, after an interval of 214 days.
- review by the Board or a Federal court began on the date the second Notice of Appeal was filed, i.e. January 4, 2010,
- the time consumed by review by the Board or a Federal court ended on the date of (1) a Board of Patent Appeals and Interferences decision, a Federal court decision, or a Board remand, or (2) the date prosecution was reopened, i.e. May 4, 2010;
- the time consumed by the second appeal thus ended on May 4, 2010, after an interval of 120 days.
- The patent term adjustment under the three-year rule of 1568 days, reduced by appeal time of 334 days, is thus 1234 days.

Reductions in Patent Term Adjustment

Removing Overlap

- Two or more grounds of delay overlap from September 19, 2006, to May 9, 2007, totaling 232 days of delay.
- This overlap has been subtracted from the patent term adjustment in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR

Net Patent Term Adjustment

The changes requested by the Applicant to the USPTO patent term adjustment determination in the Decision are as follows:

Three Year Guarantee (35 USC § 154(b)(1)(B))

	Patent Term Adjustment (days)
USPTO Calculation	0
Applicant Calculation	1234

Reductions in Patent Term Adjustment

- Removing Overlap**

	Patent Term Adjustment (days)
USPTO Calculation	0
Applicant Calculation	232

Conclusion

The Applicant requests modification of the patent term adjustment as indicated above. As shown in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR, the patent term adjustment proposed by the Applicant is thus 1895 days.

Please charge any fees or credit any overpayment of fees presently required to McAndrews, Held & Malloy, Ltd., Deposit Account No. 13-0017.

Respectfully submitted,

McANDREWS, HELD & MALLOY, LTD.

Dated: July 16, 2010

By: /Hopeton S. Walker/
Hopeton S. Walker
Reg. No. 64,808
Attorney for Applicant

McANDREWS, HELD & MALLOY, LTD.
500 West Madison Street
Chicago, Illinois 60661
Telephone: (312) 775-8000

PATENT TERM ADJUSTMENT SPREADSHEET

Ser. No. 10/665,648

Docket No. 14214US02

DATE	EVENT	Projected issue date	PTO Delay	Appl. Delay
1/4/2011	Projected issue date			
6/24/2010	Mail Notice of Allowance	51		
6/22/2010	Document Verification			
6/22/2010	Notice of Allowance Data Verification Completed			
6/22/2010	Case Docketed to Examiner in GAU			
5/4/2010	Date Forwarded to Examiner			
5/4/2010	Mail Appeals conf. Reopen Prosec.			
5/4/2010	Pre-Appeals Conference Decision - Reopen Prosecution			
5/4/2010	Four months after filing of Notice of Appeal			
1/4/2010	Request for Pre-Appeal Conference Filed			
1/4/2010	Notice of Appeal Filed			
10/19/2009	Mail Final Rejection (PTOL - 326)			
10/17/2009	Final Rejection			
10/6/2009	Case Docketed to Examiner in GAU			
9/30/2009	Date Forwarded to Examiner			
9/28/2009	Amendment after Final Rejection			

PATENT TERM ADJUSTMENT SPREADSHEET

Ser. No. 10/665,648

Docket No. 14214US02

PTO Calculation

DATE	EVENT	PTO Delay	Appl. Delay
8/4/2009	Mail Final Rejection (PTOL - 326)		
8/3/2009	Final Rejection		
5/27/2009	Date Forwarded to Examiner Response after Non-Final Action		
4/6/2009	Mail Non-Final Rejection		
1/15/2009	Non-Final Rejection		
11/4/2008	Appeal Brief Review Complete		
11/4/2008	Date Forwarded to Examiner		
10/28/2008	Request for Refund		
10/24/2008	Appeal Brief Filed		
10/24/2008	Date Forwarded to Examiner		
10/24/2008	Mail Appeals conf. Reopen Prosec.		
10/23/2008	Pre-Appeals Conference Decision - Reopen Prosecution		
10/22/2008	Miscellaneous Incoming Letter		
10/4/2008	Case Docketed to Examiner in GAU		
8/27/2008	Miscellaneous Incoming Letter		

Application Calculation

PATENT TERM ADJUSTMENT SPREADSHEET

Ser. No. 10/665,648

Docket No. 14214US02

		PTO Calculation		
DATE	EVENT	PTO Delay	Appl. Delay	
3/24/2008	Notice of Appeal Filed		30	
3/24/2008	Notice of Appeal Filed			
	Request for Extension of Time -			
3/24/2008	Granted			
3/11/2008	Mail Advisory Action (PTOL - 303)			
3/4/2008	Advisory Action (PTOL-303)			
2/23/2008	Three months after Office action			
2/8/2008	Date Forwarded to Examiner			
1/23/2008	Amendment after Final Rejection			
1/23/2008	Amendment after Final Rejection			
11/23/2007	Mail Final Rejection (PTOL - 326)			
11/20/2007	Final Rejection			
10/4/2007	Case Docketed to Examiner in GAU			
9/12/2007	Date Forwarded to Examiner			
9/7/2007	Response after Non-Final Action			29
9/7/2007	Request for Extension of Time -			
	Granted			

Application Calculation									
PTO Delay	Appl. Delay								
	30								

PATENT TERM ADJUSTMENT SPREADSHEET

Ser. No. 10/665,648

Docket No. 14214US02

PTO Calculation

Application Calculation

PTA

10/665,648	METHOD AND SYSTEM TO PROVIDE BLADE SERVER LOAD BALANCING 07-15- USING SPARE LINK BANDWIDTH	2010::17:11:28
------------	---	----------------

Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/665,648

Filing or 371(c) Date:	09-19-2003	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	893
USPTO Adjustment(days):	-	Explanation Of Calculations	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
06-24-2010	Mail Notice of Allowance	51	
06-22-2010	Document Verification		↑
06-22-2010	Notice of Allowance Data Verification Completed		↑
06-22-2010	Case Docketed to Examiner in GAU		↑
05-04-2010	Date Forwarded to Examiner		↑
05-04-2010	Mail Appeals conf. Reopen Prosec.		↑
05-04-2010	Pre-Appeals Conference Decision - Reopen Prosecution		↑
01-04-2010	Request for Pre-Appeal Conference Filed		↑
01-04-2010	Notice of Appeal Filed		↑
10-19-2009	Mail Final Rejection (PTOL - 326)		
10-17-2009	Final Rejection		
10-06-2009	Case Docketed to Examiner in GAU		
09-30-2009	Date Forwarded to Examiner		
09-28-2009	Amendment after Final Rejection		
08-04-2009	Mail Final Rejection (PTOL - 326)		
08-03-2009	Final Rejection		
05-27-2009	Date Forwarded to Examiner		
04-06-2009	Response after Non-Final Action		
10-28-2008	Request for Refund		
01-15-2009	Mail Non-Final Rejection		
01-15-2009	Non-Final Rejection		
10-22-2008	Miscellaneous Incoming Letter		
11-04-2008	Appeal Brief Review Complete		
11-04-2008	Date Forwarded to Examiner		
10-24-2008	Appeal Brief Filed		
03-24-2008	Notice of Appeal Filed	30	
08-27-2008	Miscellaneous Incoming Letter		↑
10-24-2008	Date Forwarded to Examiner		↑
10-24-2008	Mail Appeals conf. Reopen Prosec.		↑
10-23-2008	Pre-Appeals Conference Decision - Reopen Prosecution		↑
10-04-2008	Case Docketed to Examiner in GAU		↑

03-24-2008	Notice of Appeal Filed	↑
03-24-2008	Request for Extension of Time - Granted	↑
03-11-2008	Mail Advisory Action (PTOL - 303)	↑
03-04-2008	Advisory Action (PTOL-303)	↑
01-23-2008	Amendment after Final Rejection	↑
02-08-2008	Date Forwarded to Examiner	↑
01-23-2008	Amendment after Final Rejection	↑
11-23-2007	Mail Final Rejection (PTOL - 326)	↑
11-20-2007	Final Rejection	
10-04-2007	Case Docketed to Examiner in GAU	
09-12-2007	Date Forwarded to Examiner	
09-07-2007	Response after Non-Final Action	29
09-07-2007	Request for Extension of Time - Granted	↑
05-09-2007	Mail Non-Final Rejection	901
05-07-2007	Non-Final Rejection	↑
05-25-2006	Information Disclosure Statement considered	↑
04-05-2007	Case Docketed to Examiner in GAU	↑
05-25-2006	Reference capture on IDS	↑
05-25-2006	Information Disclosure Statement (IDS) Filed	↑
05-25-2006	Information Disclosure Statement (IDS) Filed	↑
03-21-2006	Case Docketed to Examiner in GAU	↑
01-27-2006	Case Docketed to Examiner in GAU	↑
06-09-2005	IFW TSS Processing by Tech Center Complete	↑
06-09-2005	Case Docketed to Examiner in GAU	↑
04-11-2005	Miscellaneous Incoming Letter	↑
09-19-2003	Oath or Declaration Filed (Including Supplemental)	↑
09-19-2003	Incoming Letter Pertaining to the Drawings	↑
09-19-2003	Substitute Specification Filed	↑
05-17-2004	Transfer Inquiry to GAU	↑
12-10-2003	Application Is Now Complete	↑
12-10-2003	Application Return from OIPE	↑
12-10-2003	Application Return TO OIPE	↑
12-10-2003	Application Dispatched from OIPE	↑
12-10-2003	Application Is Now Complete	↑
12-02-2003	Cleared by OIPE CSR	↑
10-17-2003	IFW Scan & PACR Auto Security Review	↑
09-19-2003	Initial Exam Team nn	↑

[Close Window](#)